

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

TODARIAN DONDRELL MARTIN,)	
)	
Petitioner,)	
)	1:19CV1087
v.)	1:16CR335-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This matter is before this court for review of the Recommendation filed on October 31, 2019, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 40.) In the Recommendation, the Magistrate Judge recommends that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, (Doc. 39), be dismissed without prejudice for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d). The Recommendation was served on the parties to this action on November 1, 2019, (Doc. 41). Petitioner did not file any objections to the Recommendation. However, on December 30, 2019, Petitioner filed a Supplement to his § 2255 Motion, (Doc. 43), and on March 9, 2020, he filed an Amended § 2255 Motion, (Doc.

45). Petitioner failed to indicate that he obtained certification for either his initial or amended § 2255 application by filing a Motion for Authorization in the Court of Appeals. (See Docs. 43, 45.) Therefore, as the Recommendation noted, "[t]his Court cannot grant [Petitioner] permission to file a second or successive motion. Because of this pleading failure, [Petitioner's Motion, Supplement, and Amended Motion (Doc. 39, 43, 45)] should be filed and then dismissed." (Doc. 40 at 1.)

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

Against this backdrop, this court has appropriately reviewed the portions of the Recommendation and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 40), is **ADOPTED. IT IS FURTHER ORDERED**

that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, (Doc. 39), Supplement, (Doc. 43), and Amended Motion, (Doc. 45), are **DISMISSED WITHOUT PREJUDICE** for failure to obtain certification for this § 2255 application by filing a Motion for Authorization in the Court of Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

IT IS FURTHER ORDERED that Petitioner's "motion for a final ruling," (Doc. 52), is **DENIED AS MOOT**.

A Judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

This the 8th day of September, 2020.


United States District Judge